

## REMARKS

### *Rejections Under 35 USC 103*

A prima facie case of obviousness is established when an examiner provides:

- 5 1. one or more references
2. that were available to the inventor and
3. that teach
4. a suggestion to combine or modify the references,
5. the combination or modification of which would appear to be sufficient to have made the claimed invention obvious to one of ordinary skill in the art.

10

Accordingly, an applicant who is able to prove that the Examiner has failed to establish any one of these elements will prevent the prima facie case of obviousness from being established.

Claims 1-7, 9-12, and 14-17 stand under 35 USC 103(a) as being unpatentable over Lurie, et al. (U.S. 7,289,623), hereafter referred to as ‘623 or “Lurie 1” and in further view of Creamer, et al. (US2004/0122941), hereafter referred to as Creamer. With respect to claims 1, 4-5, 6, 9-14, and 17, Examiner cites Lurie, stating that it discloses a method of connecting two parties in real time.

20

With respect to claim 1, previously amended to include the claim limitation previously found in claim 9, the present invention includes the specific limitation of “prompting said User to send an email to the Service Provider if Service Provider is busy or unavailable”. Examiner now cites Creamer paragraph 30.

Paragraph 30 of Creamer states:

25

“In addition to IVR interactions, the IVR monitor 215 can track administrative events relating to operators of at least one interactive voice response node. For example, a particular IVR node can represent an employee's telephone extension and the IVR monitor 215 can track whether that employee is available for receiving telephone calls. If the IVR monitor 215 determines the employee is unavailable, alternate actions, such as sending an email message, contacting a secretary or other alternate, or transferring the caller to a voice mailbox can result. In one embodiment, the options available to the IVR monitor 215 can vary according to the identity of the caller.”

30

Creamer suggests alternate actions, such as sending an email message, contacting a secretary or other alternate, or transferring the caller to a voice mailbox can result if an employee 5 is unavailable. The system of the present invention teaches a method and apparatus for ensuring a real time connection between users and service providers requiring the use of a telephone system and voice mail. In the present invention, the system teaches a method and apparatus for ensuring a real time connection between users and service providers that does not use or offer voice mail and provides an Internet platform that provides transaction settlement functions in 10 addition to the communication. Paragraph 30 of Creamer states “....determines the employee is unavailable, alternate actions.....”. While Examiner’s citation does suggest the use of an email message as an alternative communication option, the system of Creamer, requires and teaches a phone system that uses voice messaging, not a phone system that provides input means for creating an email. Creamer neither teaches nor suggests how email would work or be integrated 15 in the interactive voice response (IVR) application for use in telephone systems. There is also no teaching or suggestion for the combination of the (IVR) application for use in telephone systems with an Internet-based system used to initiate a live conversation with a Service Provider via a computer or electronic mobile device over the Internet as taught and claimed by the present invention. Withdrawal of this rejection is respectfully requested.

20 With respect to Claim 2, Applicant disagrees that Lurie teaches having a pop-up window prompting a user to enter their phone number to make a connection. Examine cites col. 4, ll 46-54 and Fig. 3 which teaches a communications network providing speech communication such as a switched telephone network, *but not a network for making a connection and carrying anything more than speech*. Lurie 1 requires the customer information so that is can use the customer

information such as an phone number or ID to access database information on a computer about the customer ('149 Col. 6, ll57-60). Here Lurie 1 fails to teach the claim limitation of the present invention. Examiner did not make this assertion in the first office action choosing to combine Laurie 2 with another prior art document to teach this limitation, and again fails to show its 5 teaching in Laurie alone. Withdrawal of this rejection is respectfully requested.

With respect to Claims 3-17 Applicant relies on the arguments present for claims 1 and 9 above, from which Claims 3-17 all depend. Withdrawal of this rejection is respectfully requested.

Claim 18 stands rejected under 35 USC 103(a) as being unpatentable over Olshansky (U.S. 6,493,437), hereafter referred to as '437 in further view of Official Notice and Laurie 2.

10       Lurie 2 (U.S. 7,289,612) discloses a method and apparatus for ensuring a real-time connection between users and selected service providers using voice mail. The Lurie 2 system enables seekers of a wide array of services to select, contact, converse, and pay for a service provider using a communications device such as the telephone. A seeker locates a service provider by providing the name of a profession, which is recognized by the system's software.  
15       Once a service provider is selected, the system connects the seeker with the service provider for a live conversation. However, during service provider unavailability, the system enables the seeker to leave a voice mail message for the service provider and reconnects the user and service provider once the message is reviewed by the service provider. The system automatically bills the seeker for the time spent conversing with the service provider and compensates the service 20 provider.

In contrast to Lurie 2, the present invention does not require the use of a single telephone device, which limits the teaching in Lurie 2 to a single voice message. The present invention

does not utilize or include a voice mail option as there is no connection formed or based in response to a voice mail as taught by Lurie 2.

In the present invention a user initiates a call by selecting a service icon on a website, then decides to whom they wish to speak. Next a username and password is entered to access the system to connect with the Service Provider, the user enters their phone number, and place the call. A pop-up window then provides the user with a rate for the call and account balance. The call is initiated and the system provides the connection means, settles the transaction amount, deducts fees, and provides payment to the Service Provider.

The present invention is a hosting platform for independent advisors and/or agents who build a group of advisors that can then provide advice to users. The platform also provides means for communication and payment settlement.

Examiner admits on page 9 of the Office communication with a mailing date of December 7, 2007 that:

- “Olhansky does not explicitly teach dividing the User account balance by the Service provider per minute compensation rate.”
- “Olhansky does not explicitly teach determining total minutes said User can connect to a Service Provider until said User’s account balance reaches zero.”
- “Olshansky does not explicitly teach :extracting Service Provider per minute compensation rate from System Database”.

Examiner’s own words make the possibility of an obviousness rejection impossible under 35 USC 103(a) as Olshansky fails to teach three claim limitations (element 3 of a proper 103 rejection) and the combination or modification of which would appear to be sufficient to have

made the claimed invention obvious to one of ordinary skill in the art (element 5 of a proper 103 rejection). Withdrawal of this rejection is respectfully requested.

Even in the event that Examiner intended to state in section 6 of the Office Action dated 12/07/2007 that Claim 18 stands rejected under 35 USC 103(a) as being unpatentable over 5 Olshansky (U.S. 6,493,437) in view of Lurie 2, Examiner has failed to provide any citation, teaching, or suggestion in either Olshansky or Lurie 2 that makes or suggests any combination of the two inventions, and now chooses to rely on an assertion of Official Notice.

As Examiner has noted, Applicant may traverse any/all official notice taken according to MPEP 2144.03 and that is a traverse is present, Examiner should cite a reference in support of 10 his or her position. *In re Boon* requires that more than a "bald challenge" be present in traverse.

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the 15 Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 20 230, 132 USPQ 6 (CCPA 1961)). In *Ahlert*, the court held that the Board properly took judicial notice that "it is old to adjust intensity of a flame in accordance with the heat requirement." See also *In re Fox*, 471 F.2d 1405, 1407, 176 USPQ 340, 341 (CCPA 1973) (the court took "judicial notice of the fact that tape recorders commonly erase tape automatically when new 'audio

information' is recorded on a tape which already has a recording on it"). In appropriate circumstances, it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the examiner in a first Office action to

5 take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *Ahlert*, 424 F.2d at 1092,

10 165 USPQ at 421.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported

15 by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e

20 reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test).

Here, Examiner takes Official Notice to:

- dividing the User account balance by the Service provider per minute compensation rate;
- determining total minutes said User can connect to a Service Provider until said User's account balance reaches zero; and
- extracting Service Provider per minute compensation rate from System Database.

Applicant concedes that a patent search for telephone billing systems and per-minute billing returns many prior art devices that teach or use a per-minute billing structure. Although, in reviewing those applications, until now there has been no teaching nor suggestion to a method or process for manipulating a per-minute billing rate and/or an account balance to provide or teach any optimized interaction among users. Examiner is applying hindsight in his analysis and assertion of taking Official Notice. It is easy to look backward from the present invention and

state that earlier inventions, which taught or used a per-minute billing feature would have benefited from the method or process of the present invention, but those systems were based on telephone networks, and not computer networks that now provide and enable the method and process of the present invention. Specifically, telephone systems found in prior art dating in the  
5 1990s assigned to the likes of IBM, AT&T, Bell, Telemac Cellular Corporation and many other telephone companies, while teaching and suggesting many possible billing structures does not disclose dividing a User account balance by the Service provider per minute compensation rate because the telephone systems taught in the prior art are just now using the technology to offer service providers private billing controls and users access to compare and calculate time  
10 available with respect to a real time account balance for determining total minutes said User can connect to a Service Provider until said User's account balance reaches zero. If the method and process of the present invention was indeed so well known, finding a proper prior art citation would be quickly and easily obtainable, but this is not the case.

Official Notice is not sufficient to supply motivation for modifications. The factual  
15 inquire to modify must be based on objective evidence of records. *Ex parte Humphreys* holds that when an Examiner does not provide specific reasons to support the obviousness rejection, they have failed to establish the *prima facie* case of obviousness. Here Examiner fails to state the specific element or motivation that is being taken for each of the respective claim limitations as discussed, except to make a sweeping statement that is would “help optimize the interaction  
20 between users and service providers of the system”. Withdrawal of this rejection is respectfully requested.

Claim 19 stands rejected under 35 USC 103(a) as being unpatentable over Olshansky (U.S. 6,493,437) in view of Lurie ('612) and further in view of Ling ('420). Applicant relies on the

arguments present for claim 18 above, from which Claim 19 depends. Withdrawal of this rejection  
is respectfully requested.

## CONCLUSION

5        For all the reasons advanced above, Applicant respectfully submits that the application is in  
condition for allowance and that action is earnestly solicited.

In the event that an extension of time is required, or may be required in addition to that  
requested in a petition for an extension of time, the Commissioner is requested to grant a petition for  
that extension of time which is required to make this response timely.

10      Respectfully submitted,



MATTHEW T. WELKER  
REGISTRATION No. 53,756

15

Date: December 2, 2008

20      White-Welker & Welker, LLC  
Customer No. 37,476  
PO Box 199  
Clear Spring, Maryland 21722-0199  
O 410.507.2837  
F 301.842.1141